Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
And	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	

COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.

Robert B. McKenna
Blair A. Rosenthal
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2861

Attorneys for
QWEST COMMUNICATIONS
INTERNATIONAL INC.

Of Counsel,
Dan L. Poole

October 12, 2000

TABLE OF CONTENTS

Page

SUMMARY

These Comments mark the first time that the new Qwest Communications International, Inc. ("Qwest"), following its merger with U S WEST, Inc., has weighed in on any significant issues involving local competition. With this merger Qwest became a unique entity in the telecommunications landscape. Qwest is now a large interexchange carrier, competitive local exchange carrier ("CLEC"), and data local exchange carrier ("DLEC"), while simultaneously being a Bell operating company and large incumbent local exchange carrier ("incumbent LEC"). As such, Qwest is both a major purchaser and provider of collocation. Accordingly, Qwest is in the unique position of having to balance the need and desire of a CLEC for collocation space for its own uses with the totally lawful desire of an incumbent LEC to make use of its own private property for its own uses. The balancing of these competing interests within Qwest as a whole, is very much like the balancing that the Commission will undertake in adopting rules that best meet the goals and aims of the Telecommunications of 1996 (the "Act").

Qwest has attempted to reflect this balancing in these comments. The central points in the comments are summarized as follows.

In terms of redefining the "necessary" standard of section 251(c)(6), Qwest submits that a particular piece of equipment is "necessary" for interconnection or access to unbundled network elements ("UNEs") when that equipment is actually used for one or both of those purposes and collocation is necessary for the equipment to be used in a competitively meaningful fashion. In other words, the necessary

part of the equation applies to the collocation of the equipment, not to the equipment itself.

It is also Qwest's view that if the primary purpose for collocating a given piece of equipment is interconnection or access to UNEs, then the CLECs should be permitted to collocate the equipment even if the equipment is multi-functional, and performs other reasonable ancillary functions that do not constitute interconnection or UNE-access functions. Moreover, once a CLEC lawfully obtains a collocation arrangement—i.e., by placing equipment that is both necessary to and actually used for interconnection or access to UNEs—then the CLEC should be allowed to deploy all reasonable ancillary functions of that equipment. This standard should apply even if the ancillary functions involve services not strictly defined as telecommunications service (although, functions totally unrelated to telecommunications should be prohibited).

Similarly, although a CLEC should not be allowed to collocate for the sole purpose of obtaining a cross-connection with another CLEC, once a CLEC lawfully obtains a collocation arrangement, it should be allowed to cross-connect to other collocators.

With respect to points of entry to incumbent LEC central offices, Qwest submits that the incumbent should be required to designate the appropriate point of entry for CLECs. Similarly, Qwest believes that incumbents should have the discretion to select the actual physical location of a CLEC's collocation space. The incumbent must act reasonably in doing so, however, and may not intentionally

place CLECs in a difficult to use or isolated space when more suitable space is available.

Qwest also supports physical collocation of CLECs at remote incumbent LEC premises, and, as an incumbent, offers several products to accommodate such requests. Where space is not sufficient to allow a CLEC to occupy an entire shelf in a remote terminal, then space is also not sufficient for a virtual remote collocation. Lastly, Qwest does not support the collocation of a single line card (as opposed to an entire shelf) at this time because a number of technological issues make it unworkable; should these technological issue be resolved, however, the Commission should revisit the issue, consistent with the requirements of the Act and the evolving marketplace.

With regard to the deployment of new network architectures, Qwest believes that the loop is properly defined as the physical transmission path between Qwest central offices and the customer premises. Qwest believes that dense wavelength division multiplexing should be treated as an additional capability of the loop and not as capacity of the fiber loop itself. Additionally, it is Qwest's position that unbundled dedicated transport should not be considered part of the loop—it is simply the provision of bandwidth between two offices.

With regard to the retirement of copper facilities, in many cases, any overlay of fiber does not mean that existing copper is abandoned—it is often converted to distribution facilities, and not retired at the time of the fiber placement. Further,

Qwest does not support the concept of state or federal approval of the retirement of obsolete loop plant.

Finally, Qwest submits that it is technically feasible for carriers to access the subloop by collocating at the remote terminal, and the Commission should require incumbent LECs to allow carriers to access the subloop at the remote terminal.

Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
And	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc.[1] ("Qwest") hereby submits its Comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147* ("*Second Further Notice*") and *Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98* ("*Fifth Further Notice*"), released August 10, 2000. In the comments that follow, Qwest sets forth responses to a number of the Commission's questions in these dockets, in addition to specifying the principles underlying Qwest's approach which should guide the Commission in revisiting its collocation rules.

[1] On June 30, 2000, U S WEST, Inc. merged with and into Qwest Communications International Inc. U S WEST, Inc. was the parent and sole shareholder of U S WEST Communications, Inc. U S WEST Communications, Inc. was renamed Qwest Corporation on July 6, 2000.

I. INTRODUCTION

On June 30, 2000, Qwest Communications International Inc. merged with U S WEST, Inc. With this merger Qwest, which already was a large interexchange carrier and competitive local exchange carrier ("CLEC"), acquired U S WEST Communications, Inc. (later renamed Qwest Corporation), a Bell operating company and incumbent local exchange carrier ("incumbent LEC") in its fourteen state region. The resulting merged entity stands unique on the United States regulatory landscape. Qwest is both a major incumbent LEC and a major CLEC, and now approaches this Commission as simultaneously a major seller and purchaser of collocation space. Hence, Qwest is in the unique position of having to balance the need and desire of a CLEC for collocation space for its own uses, and the totally lawful desire of an incumbent LEC to make use of its own private property for its own uses. In a very real sense, this Commission can make no decision in this docket which is a total victory for Qwest, because the unmitigated self interest of an incumbent LEC and a CLEC would, if not checked by the counterweight which Qwest's ownership structure now provides, lead to positions which by their very nature were contradictory. The balancing of the two interests within Qwest proper is very much like the balancing which the Commission itself must undertake in determining a proper regulatory structure which can best meet the goals and aims of the 1996 Telecommunications Act.

We attempt to reflect this balancing in these comments. The Commission will note that many of the results which Qwest has reached herein differ somewhat from what either of the pre-merger parts of Qwest had advocated in the past.

Where such shifts have occurred, it has been a result of our ability to perceive a somewhat larger picture and the necessity to examine sympathetically a larger number of options than required by the pre-merger operations of either company. We set forth in this introduction some basic principles which have guided our analysis and which can form a backdrop for further analysis by the Commission itself.

A. Proper Interpretation of the "Necessary" Standard Need not Impede Advancement of the Act's Goals and Objectives.

The Commission's original rules fared badly in court because the Commission attempted to define the word "necessary" in the Act as meaning only "useful," a word which carries a far less rigorous meaning than does "necessary." Obviously Qwest is not going to suggest that the Commission repeat its efforts to create a new definition of "necessary" in this docket. However, it is important to state early on that proper definition of the term "necessary" does not carry the dire consequences which obviously concerned some at the time the initial collocation rules were adopted. We view a piece of equipment as being "necessary" for interconnection or access to network elements when that equipment is actually used for one or both of those purposes and collocation is necessary for the equipment to be used in a competitively meaningful fashion. In other words, the necessary part of the equation applies to the collocation of the equipment, not to the equipment itself. If significant efficiencies can be obtained in using the equipment at a collocated site which would not be available elsewhere, and the equipment is actually used for interconnection or access to network elements, then it would seem to meet the

"necessary" test under Section 251(c)(6) of the Act. Qwest notes that the test it proposes was not intended to make it more difficult for CLECs to collocate their equipment in incumbent LEC premises. The following types of equipment would apparently meet this standard: transmission equipment, including multiplexers; ATM switches; DSLAMs; routers and concentrators; frame relay switches; and Ethernet switches.

B. Rules or Policies which Serve as a Primary Purpose to Reduce the Value of the Collocation Product are not Mandated by the Act.

Much of the focus of the two Notices in the Collocation Order is on how a CLEC can lawfully use equipment which is collocated on an incumbent LEC's property. Can the CLEC connect the equipment with the equipment of another CLEC?[2] Can the CLEC use functions in equipment which do not meet the "necessary" test of Section 251(c)(6) of the Act, even though the equipment provides many functions which are necessary for interconnection or access to unbundled elements?[3] Qwest submits that too much focus on the actual use of equipment collocated on the premises of an incumbent LEC is not productive. Obviously some examination is necessary to determine whether a CLEC can enlist the government to require the incumbent LEC to permit collocation at all. Unless the equipment is actually used for interconnection or access to elements, then the Commission has no power to require that it be collocated, whether the "necessary" test is met or not. But once it has been determined that a particular piece of equipment does indeed

[2] *Second Further Notice* at ¶¶ 88-92.

meet the standard of Section 251(c)(6) for collocation, there seems to be little justification for limiting the other natural and beneficial uses to which the CLEC could put the equipment. We suggest the following test: If the equipment is used primarily for interconnection and/or access to elements, and meets the necessary standard under Section 251(c)(6), there is no reason to limit or prohibit other functionalities which the equipment can efficiently and profitably perform. This analysis would also apply to the connection of the equipment of two CLECs in a single premise. If the equipment is lawfully collocated and is performing the interconnection and access functions which enabled it to gain its collocation rights, there is no reason to prohibit cross connection between two pieces of CLEC equipment both lawfully on the premises.

We recognize that this test, taken to *reductio ad absurdem*, could produce anomalous results. It is not our intention to support a rule which would permit a combination multiplexer and microwave oven that could be placed in collocation space and used to cook breakfast. We suggest that the test be based on whether the "primary" function of the equipment is to interconnect to the incumbent LEC network or to access network elements. "Primary" is itself a word which may have multiple meanings, but we know too little about how new equipment will be structured or configured in the future to establish more precision at this time. The Commission should not try to anticipate every circumstance which may arise in the future; if technology or the market evolves in such a way that problems arise under

[3] *Second Further Notice* at ¶ 74.

the existing collocation rules, the Commission should revisit the rules at that time upon a complete record. We submit that the Commission should simply set forth the guideline that equipment with the primary functionality and use of interconnecting with the incumbent LEC network or accessing network elements in a manner that meets the necessary test of Section 251(c)(6) may lawfully be collocated and may lawfully perform other reasonable ancillary functions that the equipment is designed to perform.[4] In this regard, the Commission could reasonably establish a rebuttable presumption that equipment with functionalities that enable interconnection or access to UNEs are permissible, regardless of other functionalities. State regulatory authorities should be entrusted with making actual determinations under the above test in circumstances where an incumbent LEC seeks to exclude a particular piece of equipment by demonstrating that it does not meet the "necessary" test.

C. The Commission Should not Devise Pricing Rules That Motivate Incumbent LECs to Seek to Avoid Collocation.

As a final introductory observation, we submit that it is important that the Commission look at establishing a mandatory collocation structure which is truly compensatory for incumbent LECs. If the Commission truly wants incumbent LECs to treat collocation as a business opportunity, it cannot have rules in place which make collocation a money-losing proposition for incumbent LECs. Currently

[4] As a general principle, the Commission should not attempt to direct the course of new technology development. Technological growth better takes place in conformance to market direction.

the rules as applied by states often prevent reasonable compensation for collocation property—a problem which can be dramatically exacerbated by requirements for reconditioning and power modifications. Despite the fact that much of the shortfall in collocation pricing should be recoverable from the Federal Government, recovery remains uncertain and may well be opposed by the Department of Justice in some instances. In the context of this docket, it is important that the Commission reaffirm its clear expectation that state arbitrators establishing collocation prices will make these prices as fully compensatory as possible, and that incumbent LECs will be able to obtain full recovery of costs expended for adding and reconditioning space as well as for making costly power modifications.

D. Qwest Plays A Significant Role As Both An In-Region Provider of Collocation, and as an Out-of-Region Purchaser of Collocation.

As an incumbent, Qwest has provided 2,086 collocation arrangements to 70 different CLECs in 540 different wire centers. Through their collocation arrangements at these wire centers, CLECs have access to 14,190,908 of Qwest's retail access lines. These wire centers account for over 83% of all of Qwest's retail access lines.

Out of region, Qwest has collocated in over 400 wire centers in the Verizon, SBC, and GTE territories to support its CLEC and DLEC initiatives.

II. COMMENTS ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING IN CC DOCKET NO. 98-147

A. Meaning of "Necessary" under Section 251(c)(6)

In the *Second Further Notice*, as a response to the D.C. Circuit's conclusion that the Commission's definition of "necessary" in the context of collocation "seem[ed] overly broad and disconnected from the statutory purpose enunciated in § 251(c)(6),"[5] the Commission sought comment on the meaning of "necessary" under section 251(c)(6).[6] Specifically, the Commission sought comment on whether the definition of "necessary" should require that an incumbent LEC permit physical collocation of equipment having capabilities beyond what is necessary for interconnection and access to UNEs, such as the collocation of multi-functional equipment.[7] Finally, the Commission inquired whether it must adopt a definition of "necessary" for purposes of section 251(c)(6) that is similar to the definition of "necessary" that the Commission adopted pursuant to section 251(c)(3) for determining which network elements must be unbundled.[8]

Qwest generally agrees with the D.C. Circuit that CLECs only have a right to "collocate any equipment that is *required* or *indispensable* to achieve

---

[5] *GTE Service Corp. v. FCC*, 205 F.3d 416, 422 (D.C. Cir. 2000) (affirming in part and remanding in part *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd. 4761 (1999) ("*Advanced Services First Report and Order*")).

[6] *Second Further Notice* at ¶ 73.

[7] *Second Further Notice* at ¶ 74.

[8] *Second Further Notice* at ¶ 75.

interconnection or access to unbundled network elements."[9] This should not, however, necessarily preclude CLECs from collocating equipment that performs other additional functions beyond interconnection or access to UNEs. As is discussed above, the "necessary" part of the equation refers to the collocation itself, not to the equipment. For equipment to be lawfully subject to mandatory collocation its primary purpose must be for interconnection or access to UNEs. If it passes this test, it is subject to collocation if collocation itself brings about significant economies which are necessary for competition. For instance, if the primary purpose and use of a given piece of equipment is for interconnection or access to UNEs, then the CLEC should be allowed to collocate the equipment even if the equipment performs other reasonable ancillary functions that do not constitute interconnection or UNE-access functions.

A rule that would preclude CLECs from deploying any or all of the additional functions of such multi-functional equipment could place CLECs at a material competitive disadvantage by forcing them to place prohibited equipment elsewhere and backhaul traffic for switching and other functions, and in some cases require the purchase of duplicate equipment.[10] Although restrictions on functionality would not prevent CLECs from offering services of the same quality as an absolute matter,

---

[9] *See GTE v. FCC*, 205 F.3d at 422 (emphasis added).

[10] Of course, to be able to obtain collocation of this multi-functional equipment in the first instance, the collocation of the equipment must otherwise meet the "necessary" standard. Moreover, Qwest does not intend to suggest that disparities in cost alone between the incumbent and a CLEC would suffice to meet the "necessary" or "impairment" standard; rather, an efficient CLEC's ability to compete must be materially impaired.

such restrictions could, as a practical matter disrupt services and competition because the failure to utilize all the power of new equipment would artificially impose inefficiencies on some CLECs. Because price is one of the most important factors to consumers in judging the overall quality of competing services, restrictions on functionality could require competitors to provide service of a significantly lower quality if the added functionality affected price. Accordingly, as long as the primary function of a given piece of equipment is for interconnection and access to UNEs, CLECs should be allowed to deploy all other reasonable functions of such equipment.

This test should apply regardless of whether the additional functions involve services not strictly defined as telecommunications services.. The distinction between telecommunications and non-telecommunications services in the marketplace is blurring, and carriers must be able to offer a variety of services, including voice, video, fax, and Internet service, in order to be competitive. Of course, functions totally unrelated to telecommunications should continue to be prohibited.

Qwest does not believe that the standard suggested above would need to evolve as manufacturers develop equipment having additional capabilities. As long as the primary function and use of the equipment is for interconnection or access to UNEs, then the CLEC should be allowed to collocate the equipment—regardless of any additional or ancillary functions that the equipment may perform.

In response to the Commission's query whether the deployment of equipment that provides no functionalities other than those directly related to, required for, or indispensable to interconnection or access to unbundled network elements would consume more or less space in the incumbent's premises than would equipment that has multiple functions,[11] it is Qwest's experience that there is no necessary correlation between functionality and size. Moreover, there is no reason to conclude that newer equipment with multiple functions will require more space than older, single-function equipment used solely for interconnection or access to UNEs—though it may require more power or HVAC. In fact, given that a newer piece of equipment might be both multi-functional *and* smaller than its predecessor, there is no reason to believe that the approach recommended here will result in more rapid space exhaustion. If actual experience later contradicts this conclusion, the Commission can deal with it upon a more complete record at that time.

Moreover, Qwest believes that limiting CLECs to the use of outdated equipment or otherwise restricting a CLEC's use of multi-functional equipment collocated on incumbent LEC premises would hurt the efficiencies of both incumbent LEC and CLEC and, therefore, competition. There does not appear to be a good reason to adopt rules that motivate or direct this result.

[11] *Second Further Notice* at ¶ 80.

B. Removal of Obsolete Equipment

In the *Second Further Notice*, the Commission noted that rule 51.321(i)[12] requires incumbent LECs to remove obsolete unused equipment from their premises in certain circumstances in order to increase the space available for collocation, and invited comment on whether it must preclude collocators, including incumbent LEC affiliates, from deploying state-of-the-art equipment in the space made available through the operation of this rule.[13] Qwest sees nothing in this that should operate to prevent the deployment of advanced technologies; indeed, its opposite is true. Unless there is a plan for incumbent LEC use of this space, Qwest believes that such reclaimed space should be made available to collocators (including incumbent LEC affiliates) on a first-come, first-served and non-discriminatory basis. As stated above, such collocators should be allowed to collocate equipment, the primary function and use of which is interconnection or access to UNEs, and which otherwise meets the requirements of section 251(c)(6). .

C. Functionality of Equipment CLECs Seek to Collocate.

In the *Second Further Notice*, the Commission sought comment from CLECs on the particular functionalities of the equipment they seek to collocate and an explanation of how each functionality is necessary for interconnection, access to unbundled network elements, or both.[14] Qwest believes that to be able to compete outside of Qwest's 14-state-incumbent LEC region as a CLEC/DLEC, it will need to

[12] 47 C.F.R. § 51.321(i).

[13] *Second Further Notice* at ¶ 77.

capitalize on all of the network efficiencies that will derive from state of the art equipment that integrates functionalities in one unit and pushes optical-type architecture outward in the network from the central office. The incumbent LECs will be permitted to install and fully utilize such equipment and CLECs must be able to do so as well, subject to the provisions of the Act. If CLECs were prohibited from collocating and fully utilizing such equipment, CLECs would be forced to backhaul traffic to their own hubs to perform those functions, thereby decreasing the efficiency of their networks and placing them at a needless competitive disadvantage to the incumbent LEC.

Presently, as a CLEC, Qwest is working with vendors on next generation transport technology that will integrate ATM functions, ethernet functions, and SONET functions all in the same "box." In order to capitalize on the dark fiber UNE, Qwest will need to collocate multi-functional equipment in central offices to perform transport and other functions for Qwest's fiber network. Such multi-functional equipment is currently located at Qwest's own hub sites. The aggregation and switching functions that presently occur at the Qwest hubs will have to occur at the incumbent LEC CO. Dark fiber is the limiting factor and the electronics must be available at central offices to maximize its network efficiency.

While current xDSL technology is used primarily for interconnection with conditioned loops to provide broadband, the next generation DSLAMs will have additional functionalities, potentially including switching functions. ATM

[14] *Second Further Notice* at ¶ 81.

technology is also moving toward combinations of ATM functionalities and SONET functionalities, which would allow traffic on the network side of a DSLAM to go directly onto an optical-type architecture instead of coming onto the network side of the DSLAM as DS1 or DS3. This makes the network more efficient by pushing the optical-type architecture outward on the network and saving transport costs by avoiding the need to backhaul traffic to Qwestlink sites. Finally, Ethernet technology, which is used in LAN-type environments, often involves multi-functional equipment that is used for interconnection but is also used for aggregating and switching functions.

D. Line Cards

In the *Second Further Notice*, the Commission sought comment on whether line cards are equipment necessary for interconnection or access to unbundled network elements.[15] As an incumbent LEC, Qwest has permitted CLECs to place their DSLAMs in a Qwest central office as part of the line sharing architecture. Specifically, CLECs may place a splitter either in their cage or in a shared splitter bay in the central office. Although next generation line cards support several functionalities and may be the electronic device that delivers a copper pair to the switch, it would be premature to require line card collocation on a general basis since implementation issues such as equipment interoperability have not been resolved. While it does not seem likely that line card collocation will prove feasible in the circuit switching world, the Commission should stand ready to revisit line

[15] *Second Further Notice* at ¶ 82.

card collocation in conjunction with technologies other than circuit switching, consistent with the Act and the changing marketplace.

E. Limitations on Services Provided by a Collocator

The Commission also sought comment on how any limitation placed on the telecommunications services a collocator may provide would further the purpose behind section 251(c)(6) and the goals of the Act, or would otherwise be just, reasonable, and nondiscriminatory and satisfy sections 251(c)(2) and (3).[16] Qwest does not believe that any limitation (other than technical feasiblity) placed on the telecommunications services that a collocator provides with its equipment out of its collocation space would be just and reasonable. Once a collocator lawfully obtains a collocation arrangement (i.e., by placing equipment that is necessary and used for interconnection or access to UNEs), no restrictions (other than technical feasibility) should be placed on the telecommunications services provided by the collocator. Moreover, if a piece of collocated equipment is primarily used for interconnection or access to UNEs (i.e., for telecommunications services), Qwest sees no reason to prohibit ancillary use of the equipment for non-telecommunications services such as the provision of enhanced services. If the collocator were to stop using the functionality of the equipment that is necessary and actually used for interconnection or access to UNEs—i.e., if the CLEC were to stop using the functionality upon which the necessary test for collocation was met—then the CLEC would no longer be entitled to remain in the collocation space.

[16] *Second Further Notice* at ¶ 83.

F. Cross Connections between Collocators

In the *Second Further Notice*, the Commission sought comment on whether section 251(c)(6) encompasses cross-connects between collocators such that a cross-connect between collocators is deemed "necessary for interconnection or access to unbundled network elements" within the meaning of section 251(c)(6), and if so, whether section 251(c)(6) encompasses both direct interconnection (i.e., direct physical links between the collocators' facilities or equipment) and indirect interconnection (i.e., links through the incumbent's facilities or equipment).[17]

As suggested above, as long as the primary purpose of the collocated equipment meets the "necessary" standard, then other functions of the equipment or purposes accomplished by the collocation should be permissible, subject to a reasonableness standard. Accordingly, Qwest does not believe that it would be just and reasonable to deny a collocator, who otherwise meets the "necessary" standard, additional incidental (and reasonable) uses of the collocation space, such as cross-connects to other CLECs that are otherwise lawfully collocated in that central office. Qwest believes that it would not be just and reasonable to prohibit a CLEC from cross-connecting with other CLECs when those CLECs have otherwise legitimately obtained collocation under the Act (i.e., for interconnection or access to UNEs).

The Act, however, does not allow a CLEC to obtain collocation from an incumbent LEC for the *sole or primary purpose* of cross-connecting to other CLECs. Indeed, cross-connecting to other CLECs does not equate to interconnection with

[17] *Second Further Notice* at ¶ 88.

the [incumbent] local exchange carrier's network,"[18] or access to the unbundled network elements of the incumbent LEC;[19] nor can it be argued that cross-connects are necessary to access the UNEs of, or achieve interconnection with, the incumbent LEC as required by section 251(c)(6).[20] Where a CLEC does not otherwise meet the standards set forth in that provision, there can be no justification (or authority) for requiring the incumbent LEC to permit such cross-connects.

The Commission further sought comment concerning whether the time intervals necessary for provisioning and constructing cross-connects would vary depending upon whether they are constructed by an incumbent LEC or a competitive LEC.[21] Qwest agrees with the suggestion in the *Second Further Notice* that time intervals for provisioning some parts would vary between incumbent LEC and CLEC. This is based of the fact that each may use different vendors to purchase products like cable and termination blocks. Intervals are also affected by varying shipping intervals. Qwest is currently considering a number of options, including the possibility of standard intervals, which would be based in part on whether cable racking already exists in the path for the cross-connect. The Commission also inquired whether there are any circumstances in which it should require that an incumbent LEC permit collocators to construct their own cross

[18] 47 U.S.C. § 251(c)(2).

[19] 47 U.S.C. § 251(c)(3).

[20] This might not always be true, however. For example if a CLEC-to-CLEC cross-connection enables one CLEC to access UNES through the facilities of the second CLEC, this might meet the statutory test.

[21] *Second Further Notice* at ¶ 90.

connections as opposed to obtaining them from the incumbent[22]. Such construction would invariably implicate security and safety concerns, and we submit that the Commission cannot require incumbents to permit CLECs to construct their own cross-connections. The use of approved vendors contracted by the CLECs would be a reasonable option, however. After a CLEC's collocation application, and feasibility studies and quote are completed, Qwest engineering, upon receipt of 50% down payment, would determine the cable path, issuing a job to place cable racking if needed. The requesting CLEC would then be responsible for contracting with a Qwest-approved vendor to place any needed racking and the equipment cabling. In either case, the cable must enter Qwest cable racking space and travel through fire stopped floor holes. Given these considerations, only approved vendors should install/construct cross-connections, and the incumbent LEC should control the path of any racking or cable to be used or placed.

G. **Points of Entry into Incumbent LEC Central Offices**

The Commission sought comment on whether incumbent LECs should exercise exclusive discretion over determining which manholes will act as a point of entry for collocated carriers, whether it is technically feasible for incumbent LECs to designate one or two points of entry into the central office, and whether the Commission may require incumbent LECs to permit cross-connecting collocators to utilize the same point of entry into the central office.[23]

---

[22] *Second Further Notice* at ¶ 91.

[23] *Second Further Notice* at ¶ 92.

For its in-region territory, Qwest has, whenever technically and operationally feasible, designated two manholes as the points of entry into a particular central office. These manholes are built on two different sides of the central office for redundancy purposes (when requested). Qwest pre-provisions fiber cables for the CLEC community to splice their fiber into this Qwest-provided cable. This process ensures speedy access by the CLECs to their collocation space and ensures that every CLEC is treated the same. Furthermore, Qwest engineers these manholes to be as close as possible to the cable vault and ensures that adequate conduit capacity exists for the CLECs. This process also ensures minimum disruption to the PSTN and substantially reduces the risk of a fiber cut due to increased activity in the existing manholes. Any requesting CLEC can enter the central office through either manhole.

Out of region, Qwest has encountered a number of challenges with the incumbent LECs specific to the question of identification or determination of the manholes that Qwest should use in order to access its collocation space:

Governing Contract: In many instances where Qwest has right-of-way ("ROW") and conduit access provisions in its interconnection agreement, those provisions have not been honored by the incumbent LEC and Qwest has been required to execute a totally separate Conduit Access and Right of Way Agreement with the incumbent LEC before it will designate manholes and provide Qwest with a license to occupy the manhole. Qwest encountered this problem in the Bell Atlantic region, however similar issues exist in the other incumbent LEC regions.

For example, in California, Qwest has duplicate conduit access/ROW agreements: there are provisions in its interconnection agreement, and there are three separate regional contracts (LA 124 for Los Angeles; NO344 for Northern California; and S1709 for Southern California). In Missouri, Qwest opted into an agreement that included conduit access/ROW provisions, while at the same time SBC presented Qwest with a separate conduit access agreement. Qwest has noticed a trend by the incumbent LECs to attempt to exclude Conduit Access/ROW provisions from new interconnection agreement templates so that in the future, CLECs will be required to have totally separate contracts to address these issues.

Qwest urges the commission to require incumbent LECs to:

- honor the ROW/conduit access provisions of the interconnection agreements and prohibit the incumbent LECs from requiring separate, duplicate contracts in order to obtain access to manholes; and
- ensure that CLECs can continue to have the option of having ROW/or conduit access issues addressed as part of a single, comprehensive interconnection agreement that must be filed and approved by the state commissions.

Manhole Assignment: the process of obtaining access to manholes varies by incumbent LEC—and often within an incumbent LEC, the process varies by region. For example, in the SWBT territory of SBC, the process of having manholes assigned is included in the collocation application process. However, in the Ameritech territory and the Pacific Bell territory, completely separate manhole applications must be submitted. In Ameritech, the applications can be submitted to a centralized Structure Access Center, however in Pacific Bell, the applications must be filed with a variety of regional contacts depending upon the city in which

the manholes are required. In addition, in California, Pacific Bell will not accept applications from personnel at a CLEC whose names are not pre-designated on a list that the CLEC must maintain with Pacific Bell (a CO 4926 form). Finally, Qwest has encountered delays in having incumbent LECs assign manholes until the incumbent LEC is provided a detailed map of Qwest's local network – a map which is not necessary in order for the incumbent LECs to assign the manholes on their own network.

Two scenarios are prevalent in the identification and assignment of manholes:

- The incumbent LEC identifies all the possible manholes serving a central office; the CLEC selects the manholes they prefer and applies for them; the incumbent LEC researches those manholes and responds whether space is available;
- The incumbent LEC simply designates manholes in which space is known to be available.

Qwest's preference is for the incumbent LEC to determine the manholes in which space is available, and we will build our network to those manholes. Any other process that requires the exchange of manhole information, maps, and space availability only builds delay-time into the planning and construction process.

Beyond the assignment of manholes, Qwest has also encountered problems with the exchange of network-critical information related to those manholes on a timely basis. Qwest needs to know the identity of the manholes as well as the footage measurements from the manhole to the collocation space (including the footage to the vault, the riser and the actual collocation space), so that Qwest can

leave sufficient fiber in the manhole to reach its collocation space. Any delays in receiving this information can jeopardize a network construction project. The Commission should require the incumbent LECs to establish clearly defined processes and intervals for providing this information in writing to the CLEC. Our experience has been that the processes are not uniform, or where there are processes defined, they are not being followed.

Finally, on a related note, Qwest has also had problems with having the fiber–pull from the manhole to the cage completed on a timely basis. This is a critical piece of the puzzle—if there are established intervals for delivery of the collocation space, and established intervals for access to the manholes, but no defined process or interval to have the fiber pulled from the manhole to the collocation space, then equipment could be installed for months but not be able to be put into service due to the incumbent LEC's failure to schedule and pull the fiber on a timely basis. Qwest has encountered intervals as short as 10 days and as long as 80 to have fiber pulled to its collocation space.

To solve the above problems, the Commission should instruct the incumbent LECs to establish uniform processes for managing the application for and assignment of manholes required for collocation, with defined intervals for the exchange of network information. In addition, the Commission should require the incumbent LECs to continue to include the conduit access/ROW provisions in their interconnection agreements, and should prohibit the imposition of unnecessary administrative "pre-requisites" to the acceptance of manhole application (such as

Pacific Bell's requirement that all personnel submitting applications be pre-registered with them on a CO 4926 form). Finally, the Commission should require the incumbent LECs to establish and publish defined processes and intervals for pulling fiber to a collocation cage; where the CLEC can have the fiber in the manhole by a specified deadline, the timeframe for pulling the fiber should be included in the collocation interval itself. However, where the fiber arrives in the manhole after a designated timeframe, the incumbent LEC should have a defined interval, such as 10 days, to have the fiber pulled.

H. Selection of the Actual Physical Collocation Space

In the *Second Further Notice,* the Commission sought comment on whether the incumbent, as opposed to the requesting carrier, should select a requesting carrier's physical collocation space from among the unused space in the incumbent's premises.[24] We submit that the incumbent LEC should determine the placement of collocation in the central office for several reasons. First, the incumbent LEC is the owner of the central office, and is responsible for the provision of telephony as the provider of last resort. Only the incumbent LEC can plan the appropriate overall functional use of the central office over the expected life of the building. The incumbent LEC is responsible for the common systems of power and HVAC for the central office and is responsible for the functioning of the central office in the event of an emergency or disaster. For all of the above reasons, the incumbent LEC should make the determination on placement of collocation in the central office.

[24] *Second Further Notice* at ¶ 96.

Furthermore, the Commission need not (and should not) promulgate additional rules or establish criteria by which the incumbent LEC must select collocation space. Section 251(c)(6) already provides that the incumbent LEC must provide collocation on "just, reasonable, and non-discriminatory" terms. If the incumbent LEC, for example, intentionally placed a requesting carrier in a collocation space that is difficult to use or isolated when more suitable space is available, such a practice could violate section 251(c)(6) as a failure to provide collocation on just and reasonable terms, unless the incumbent LEC can provide a legitimate business reason for doing so. In short, incumbent LECs must act reasonably under the Act, and additional rules are unnecessary.

The Commission also sought comment concerning the circumstances in which the placement of collocators in a room or isolated space separate from the incumbent's own equipment would violate the Act, as well as how such placement would otherwise affect the cost of obtaining collocation.[25] Qwest allows collocation where space is available on a first-come, first-served basis. Moreover, whenever possible, Qwest places all collocation areas within its central offices (rather than in adjacent areas). If, however, no space is available in the central office, Qwest might be forced to place collocation areas on separate floors or in adjacent areas. . The length of time and the cost of conditioning this space would depend on several factors such as: power availability, HVAC availability, racking availability, and conduit availability. This scenario would also apply to space availability in remote

[25] *Second Further Notice* at ¶ 96-97.

terminals or other outside plant structures. There is no need for additional rules in this area.

I. Collocation at Remote Incumbent LEC Premises

In the *Second Further Notice,* the Commission sought comment on whether and to what extent it should modify its collocation rules to facilitate subloop unbundling.[26] Specifically, the Commission sought comment on the technical and security concerns and requirements associated with remote collocation.[27] Qwest supports collocation at remote incumbent LEC premises, and believes that remote collocation should provide access to subloops at workable interconnection points.

As an incumbent, Qwest offers several different products to accommodate the CLECs' desire for remote collocation at structures that house Qwest network facilities on public rights-of-way and all land owned, leased, or otherwise controlled by Qwest, such as controlled environmental vaults, controlled environmental huts, cabinets and other remote terminals.

The first product is Joint Planned Space-Remote Collocation ("JPS"). This product is available where space is not available, and Qwest is planning to build facilities to accommodate a DSLAM for provision of its own services. JPS offers DSLAM space in a remote cabinet on a shelf level as Qwest deploys new xDSL remote terminal cabinets. After seeking input from CLECs, Qwest will construct the amount of space requested by the CLEC simultaneously with the Qwest

[26] *Second Further Notice* at ¶ 104.

[27] *Id.*

DSLAM build. The space can include access to AC/DC power, heat dissipation, and terminations to the Feeder Distribution Interface ("FDI").

The second remote collocation product is called Leased Existing Space-Remote Collocation ("LES"). This type of remote collocation occurs when space in cabinets and vaults facilities already exists to accommodate CLEC equipment. Space will be offered on a first-come, first-served basis at the full shelf level, and any equipment placed by a CLEC must meet the requirements of the remote site (e.g., space, power, heat, termination and heat dissipation requirements).

With both of these products, the CLEC will be responsible for all associated costs for physical cabinet space, terminations, FDI usage and/or modifications. The CLEC must meet the width and height requirements of the remote cabinet, and will be responsible for procuring and placing their equipment in the remote cabinet, as well as the maintenance of such equipment. With the JPS product, the CLEC must provide a forecast in order to accommodate requests for joint planned space, and must provide space, power and heat dissipation capabilities in order for Qwest to meet a request. With JPS, the CLEC will assume all costs for necessary "site" modifications needed to meet a remote collocation request (e.g., cabinet, FDI, feeder requirements, right-of-way, etc.).

With the exception of the field verification/quote preparation interval, which is 21 business days, all other intervals with these products are done on individual case basis.

Where facilities to accommodate remote collocation do not exist and Qwest is not planning on constructing them in the near term, Qwest also offers access to subloops through a product named Field Connection Point ("FCP"). The FCP allows the CLEC to bring its cable into any accessible terminal. Because of the varied environments and municipal regulation the actual implementation of the FCP may be varied, but the basic product provides a splice point in or near the accessible terminal, where the CLEC wishes to access subloops, by placing jumpers from the CLEC's terminations to Qwest terminated subloops. Upon request, Qwest Corporation will place a new splice terminal and terminate a cable stub from the splice terminal to the accessible terminal (although existing terminals may be used if there is space for the CLEC's cable and spare terminations are available.).

1. Disclosure of Information Concerning Remote Terminals

The Commission sought comment concerning whether incumbent LECs should be required to provide requesting carriers with demographic and other information regarding particular remote terminals similar to the information available regarding incumbent LEC central offices.[28] Qwest supports the disclosure of network information concerning *particular* remote terminal locations (e.g., distribution area boundaries, the number of living units within the distribution area). It would not be reasonable and would be overly burdensome, however, to require incumbent LECs to provide information on remote terminals on a

[28] *Second Further Notice* at ¶ 107.

generalized basis.[29] Furthermore, Qwest does not support the disclosure of customer proprietary network information as part of this disclosure.

2. Line Card Collocation

In the *Second Further Notice,* the Commission sought comment on whether it should require incumbent LECs to permit collocation of individual line cards in digital loop carriers located in incumbent LEC remote terminals.[30]

As is the case with line card collocation at the central office, Qwest does not presently support such card-at-a-time collocation at this point in time, and instead supports remote collocation at the shelf level. First, with shelf collocation, the CLEC has an equal opportunity to provide what the incumbent provides. Moreover, based upon current technology, a card cannot stand alone—it depends on the shelf for power, CPU, and other functions, and cannot perform a dedicated function. A copper pair is wired to the back plane in the shelf at the remote terminal, and the back plane assigns the particular call to particular line card in the shelf. Thus, cards work on a pooled basis, without any discrete functionality to a particular end user (similar to the "party line" concept of the past for voice lines). In short, a card would need the incumbent-LEC-provided shelf, electronics, and transport (since a single fiber lights up not only the card but the entire shelf).

There are also interoperability issues to be resolved before card-at-a-time collocation will be workable, since not all cards and shelves are presently compatible. Additionally, present-day OSS cannot support card-at-a-time

[29] Qwest literally has hundreds of thousands of remote terminals..

collocation. While it does not seem likely that card-at-a-time collocation will prove feasible in the near term, if the technological issues are resolved, the Commission should stand ready to revisit card collocation, consistent with the Act and the changing marketplace.

3. Zoning and Rights-of-Way Issues

The Commission also sought comment on how, if at all, zoning, rights-of-way, and other property laws will affect an incumbent LEC's ability to install remote structures that are sufficiently large to accommodate potential collocators.[31] Specifically, the Commission invited comment on whether incumbent LECs' easements permit adjacent collocation of remote terminals, and whether local governments, electric power companies, and similar third parties will allow collocators to place their own controlled environmental huts, controlled environmental vaults, cabinets, and other structures at remote locations, including on public rights of way.[32] Finally, the Commission noted that in the *UNE Remand Order*, it found that a competitive LEC should be responsible for resolving any obstacles that it encounters from municipalities or electric utilities in seeking to obtain unbundled access to an incumbent's subloop elements, and inquired whether CLECs should be responsible for resolving similar problems in connection with collocation at remote incumbent LEC premises.[33]

---

[30] *Second Further Notice* at ¶ 109.

[31] *Second Further Notice* at ¶ 111.

[32] *Id.*

[33] *Id.*

Qwest's easements and other licenses are typically broad enough to allo CLECs to collocate within existing cabinets and other structures. However, the concern implied in the *Second Further Notice* that zoning and other property laws may make it more difficult for incumbent to install new structures that are "sufficiently large" to accommodate remote collocation of CLECs is a valid one. Obviously, the larger the proposed cabinet or other structure, the less likely it is that municipalities and other third parties will permit incumbents to place such structures in residential neighborhoods.

Finally, Qwest lacks the authority to extend its easements or licenses to permit a CLEC to place a CLEC-owned cabinet or other structure in such locations. Consistent with the Commission's conclusion in the *UNE Remand Order*, the CLECs should be responsible for resolving such issues directly with the municipality or other third party involved.[34]

4. Virtual Collocation in Remote Locations

In the *Second Further Notice*, the Commission sought comment on whether virtual collocation constitutes an acceptable substitute for physical collocation in remote locations.[35] Virtual collocation is not an acceptable substitute for physical collocation in remote locations because the same constraints that would limit the availability of remote physical collocation would similarly constrain any such

---

[34] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, 15 FCC Rcd 3696, 3792, ¶ 270 (1999) ("*UNE Remand Order*").

[35] *Second Further Notice* at ¶ 112.

virtual collocation in remote premises. Indeed, in some ways collocation at a remote terminal is already akin to virtual collocation in a central office. In a central office where space is not sufficient to allow for a separate physical collocation, Qwest offers virtual collocation whereby Qwest places CLEC equipment in a shelf in the Qwest line-up. In a remote physical collocation scenario, the CLEC is similarly placing its equipment in a shelf. Where space is not sufficient to allow a CLEC to occupy an entire shelf in a remote terminal, then space is not sufficient for a virtual remote collocation as well. Qwest also submits that incumbent LECs should not be required to maintain CLEC equipment in a remote terminal when the CLEC has been given direct access. Finally, as indicated above, card-at-a-time remote collocation is not presently a workable solution.

J. Provisioning Intervals

The Commission also sought comment on provisioning intervals, including whether it should specify an overall maximum collocation provisioning interval shorter than 90 calendar days or shorter intervals for particular types of collocation arrangements; possible maximum intervals for and the steps required to provision caged, cageless, shared, and adjacent collocation arrangements, modifications to existing collocation arrangements, collocation within remote incumbent LEC premises, and collocation involving conditioned and unconditioned space.[36]

The Commission has already established a default provisioning interval of ninety days, which applies when a state commission has not set forth its own

[36] *Second Further Notice* at ¶ 115.

intervals. Thus, the interval set by the Commission does not deal with the complicated issues addressed in this notice, nor does it speak to other critical interval issues such as forecasting. Qwest submits that delegation of these issues to the states, subject to the federal default backdrop, is appropriate, and no new rules need to be adopted in this docket unless the Commission chooses to become more actively involved the actual intervals used in each state. In that case, specific rules to address each aspect of provisioning intervals will be necessary Qwest's position on several critical issues, including forecasting, reconditioning of space, and adjacent space, are addresses in Qwest's Petition for Clarification Or, In the Alternative, Reconsideration, which is attached.

K. Space Reservation Policies

In the *Second Further Notice*, the Commission also sought comment on whether it should adopt a national space reservation policy that would apply where a state has not set its own standard, and, to the extent that a national standard is warranted, what standards would be appropriate standards for varying types of equipment.[37]

Qwest believes that a central office space reservation system would be beneficial only if a binding forecast and the payment of 50% down is connected with a reservation. If no binding forecast is required, then, the first-come, first-served policy should remain in place. Finally, with technology advancing at an accelerated rate in developing multi-functional equipment, it would be difficult to administer a

[37] *Second Further Notice* at ¶ 117.

standard template for permissible collocation equipment that meets network and businesses strategies for all CLECs.

III. COMMENTS ON FIFTH FURTHER NOTICE OF PROPOSED RULEMAKING IN CC DOCKET NO. 96-98

A. Loops and Interoffice Transport

In the *Fifth Further Notice*, the Commission sought comment whether an individual optical wavelength generated by dense wavelength division multiplexing ("DWDM") equipment is itself a loop or is rather a feature, function, or capability of the fiber loop, and whether there are any proprietary concerns related to accessing an optical wavelength of the loop.[38]

Qwest believes that the loop is properly defined as the physical transmission path between Qwest central offices and the customer premises. DWDM systems[39] create optical wavelengths with a single fiber and not a specific bandwidth, since the bandwidth to be used with this wavelength is dependent on the technology being used. Because the bandwidth is determined by the attached equipment, Qwest believes that the DWDM should be treated as additional capability of the loop, and not as additional capacity of the loop.

DWDM technology is relatively new, highly proprietary, and current technical standards do not yet address this technology. Moreover, the Network Management Systems ("NMS") built for these systems do not currently support

[38] *Fifth Further Notice* at ¶ 120-21.

[39] Dense Wave Division Multiplexing ("DWDM") is rarely used in the Qwest Local Network. Where it is used, the DWDM system is placed on the protect channel and not the working channel of the optical system.

multiple carrier access. Accordingly, it is not currently possible or technically feasible to partition the NMS for multiple service providers.

The Commission also sought similar comment concerning unbundled dedicated transport.[40] Qwest does not believe that unbundled dedicated transport should be considered to be part of the loop. Unbundled dedicated transport is simply the provision of bandwidth between two offices. This bandwidth could be carried over different technologies (e.g., fiber or radio). Such services are provided through standard based interfaces, and the telecommunications industry has been providing bandwidth to end-users for quite some time.

B. Subloops

In the *Fifth Further Notice*, the Commission sought comment generally on whether the deployment of new network architectures necessitates any modification to or clarification of the Commission's rules concerning subloops, as well as those pertaining to line sharing.[41] The Commission also sought comment on what features, functions, and capabilities of the subloop are created by the deployment of fiber feeder and NGDLC systems, and whether accessing the features, functions, and capabilities of subloops consisting of fiber facilities includes access to all technically feasible transmission speeds and quality of service ("QoS") classes such as Constant Bit Rate ("CBR") and real time and non-real time Variable Bit Rate

[40] *Fifth Further Notice* at ¶ 121.

[41] *Id*. at ¶ 123.

("VBR") that exist in the attached electronics.[42] The Commission also sought comment on whether the provision of multiple CBR and or VBR channels, circuits, paths, or connections over the same fiber feeder facility would cause interference or congestion that could lead to service degradation.[43]

The NGDLC systems that are being deployed by Qwest consist of the equipment and features, functions and capabilities that drive certain services to the end user. These features, functions and capabilities are equipment-driven and the loop has no technical impacts on them. Furthermore, the NGDLC systems would be deployed where fiber exists or fiber is planned for the subloop. These NGDLC systems are capable of delivering services such as xDSL and functions such as Constant Bit Rate (CBR) and Variable Bit Rate (VBR). By contrast, the Quality of Service (QoS) classes are offered through the ATM network that is installed in the Central Office.

The provisioning of an end-to-end service with a particular transmission speed is a function of and involves multiple pieces of equipment. This equipment would include: the modem in the customer premise; the remote DSLAM; the ATM switch; and the type of equipment the ISP is connecting to the ATM switch. Thus, the fiber subloop, by itself, does have the technical capability for the service provider to offer any of the services or functionalities mentioned earlier—as determined by the particular equipment attached to the subloop. Thus, CLECs obtaining access to the subloop will have access to all the features, functions, and

[42] *Fifth Further Notice* at ¶ 125.

capabilities of the subloop. Where the capacity of the subloop is limited and insufficient to accommodate all service providers, capacity should be allocated on a first come first served basis.

Qwest notes, however, that bandwidth is a finite element. Where multiple service providers use this bandwidth to provision different services, and where those services require a constant and defined transmission speed, service could be degraded for all providers. Thus, planning and traffic engineering must be employed by everyone, even in a CBR environment.

VBR presents a greater challenge. In a VBR environment, this bandwidth is offered to all users and a contention mechanism is put in place. If all users are contending for this finite bandwidth, congestion will occur. This is dependent on the transmission speed being generated by the end users, with higher speeds creating more congestion. Qwest believes that the ADSL Forum should be the place where a policing and traffic engineering policy is developed and agreed to by the manufacturers and service providers. This process is equivalent to the charter of the Frame Relay and the ATM Forums.

With respect to the Commission's query concerning the ability of a CLEC to install multiplexing equipment in the remote terminal and central office for purposes of accessing the subloop,[44] Qwest notes that as long as space, power, and HVAC are not an issue in the remote terminal and the Central Office, any CLEC can install multiplexing equipment at both ends of the fiber to gain access to the

[43] *Id.* at ¶ 125.

subloop. Similarly, the CLEC can acquire a right-of-way in close proximity of Qwest's remote terminal and install its multiplexing in its own cabinet in order to access the fiber subloop.

In cases where all of the fiber capacity is dedicated to the equipment in the remote terminal, the CLEC can order finished services such as OC-3. If no fiber and/or bandwidth capacity exists in the remote terminal, the CLEC and the incumbent LEC are in the same position and joint planning to increase that capacity becomes critical.

With respect to the Commission's query whether there are any proprietary concerns related to accessing the subloop at the remote terminal,[45] Qwest notes that dark fiber access at the remote terminal does not present any proprietary concerns because no equipment is attached to it. If the CLEC requires access to the incumbent LEC DSLAM, partitioning of the equipment is not technically possible. This case would present proprietary concerns.

The Commission sought comment on what (if any) obligations should be imposed on incumbent LECs to increase the capacity of the subloop to accommodate carriers' requests for access to the subloop.[46] Qwest believes that with joint planning between the incumbent LECs and CLECs, such situations should be rare.

---

[44] *Fifth Further Notice* at ¶ 126.

[45] *Id.* at ¶ 126.

[46] *Id.* at ¶ 127.

C. Spare Copper

The Commission also sought comment on the obligations of incumbent LECs with respect to copper facilities, when the incumbent LEC overlays those facilities with fiber and installs NGDLC equipment in remote terminals, and what processes the incumbents have in place for determining whether to retire unused loop facilities.[47]

Qwest's processes with respect to retirement or abandonment of copper facilities differ depending on whether the copper facilities in question are buried or underground. In the case of a buried facility (i.e., not in a conduit), a cable may be abandoned in place when a fiber facility assumes the load. In many cases however, the feeder facility may be converted to distribution or be pressed into service closer to the central office and is not retired at the time of placing fiber feeder facilities. Underground copper facilities are frequently removed to vacate ducts in congested conduit runs to make room for fiber placements. If duct space is available, existing copper facilities may be, and usually are, left untouched, and the fiber feeder is used in addition to the existing copper feed. In neither instance can it be assumed that a fiber placement automatically means the retirement of the existing copper facility. Each case must be looked at on an individual case basis before a determination can be made as to retirement or abandonment of copper facilities. No change is anticipated in this process.

[47] *Fifth Further Notice* at ¶ 129.

With respect to notice to competitors of retirement of copper facilities, Qwest notes that in most cases, copper facilities are retired because the plant has reached the end of its lifespan (e.g., lead sheathed copper). Indeed, the placement of fiber only rarely accelerates the retirement of copper facilities. In either instance, CLECs would be notified of major changes in the network as per provisions within the interconnection contracts. In no instance will existing services or products being purchased by the CLEC be jeopardized by the change in technology. Mass notification of copper retirements to the CLEC community would seem to be unnecessary at this juncture.

Finally, the Commission inquired whether there should be a state or federal approval process before incumbent LECs are permitted to retire and remove loop plant, and whether there are otherwise implications under the Act or the Commission's rules concerning the sale of such retired loop plant by the incumbent to another entity.[48]

Qwest does not support the concept of state or federal approval for the retirement of obsolete loop plant, and there is no support in the Act for this concept. Although, section 214 of the Act prohibits a carrier from discontinuing, reducing, or impairing service to a community without Commission approval,[49] section 214 cannot be read to require Commission approval where the loop plant itself has simply been altered and upgraded, but the service to the end user remains in place. Indeed, section 214 specifically indicates that "nothing in this section shall be

[48] *Second Further Notice* at ¶ 131.

construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment . . . which will not impair the adequacy or quality of service provided."[50] Nothing in the Act suggests that when an incumbent upgrades its copper loops to fiber, that the retirement of the copper facilities requires Commission approval under section 214 or any other provision of the Act.

D. Cross Connection

In the *Fifth Further Notice*, the Commission sought comment on various aspects of remote terminals and subloops.[51] Qwest believes that it is technically feasible for carriers to access the subloop by collocating at the remote terminal, and that the Commission should require incumbent LECs to allow carriers access to the subloop at the remote terminal. Qwest Corporation (i.e., the Qwest incumbent LEC) has already begun to ensure that with any greenfield build that remote terminals will have a technically feasible access point.

In response to the Commission's query whether there are any circumstances under which a special construction arrangement, including a cable splice, is necessary to access a subloop,[52] Qwest notes that Qwest Corporation facilitates access to subloops through a product named Field Connection Point ("FCP"). The FCP allows the CLEC to bring its cable into any accessible terminal. Because of the

---

[49] 47 U.S.C. § 214(a).

[50] *Id*.

[51] *Fifth Further Notice* at ¶ 133.

[52] *Id*. at ¶ 133.

varied environments and municipal regulations the actual implementation of the FCP may be varied, but the basic product provides a splice point in or near the accessible terminal which the CLEC wishes to access subloops, by placing jumpers from the CLECs terminations to Qwest terminated subloops. Upon request, Qwest Corporation will place a new splice terminal and terminate a cable stub from the splice terminal to the accessible terminal (although existing terminals may be used if there is space for the CLECs cable and spare terminations are available).

Such special construction arrangements should be priced to allow the incumbent to recover its cost for engineering, labor, material, security, and any private rights-of-way (if needed and available).

Qwest does not believe that there are presently means other than special construction arrangements (i.e., on an individual case basis), that would enable competing carriers to obtain access to the subloop at all the possible remote terminals when the copper pairs are hardwired at the remote terminal.

IV. THE COMMISSION MUST RECOGNIZE THAT PRIVATE PROPERTY RIGHTS REMAIN OF CRITICAL IMPORTANCE.

Prior to the merger, the pre-merger U S WEST argued at length about the dangers inherent in the Federal Government taking too aggressive a posture regarding the use and expropriation of the private property of incumbent LECs. The essential position was that the Commission must tread cautiously when seizing private property, even property of a carrier, because such seizures have constitutional implications far more consequential than most regulatory actions which this Commission undertakes. In the *Collocation Order*, the Commission

seems to have misapprehended our point to some degree, focusing instead on whether its collocation actions constituted unconstitutional property takings.[53] Because the point is important, we briefly restate the role of takings jurisprudence in developing a coherent collocation strategy. By a coherent strategy, we mean one which not only furthers the goals of the Act and is consistent with the language of the Act itself, but one which has a reasonable chance of surviving judicial review and, perhaps most significantly, does not expose the federal treasury to being tapped as a subsidy source for those using incumbent LEC collocation space.

Some basic principles are no longer in doubt.

- When the federal government requires that an incumbent LEC grant physical collocation rights to a CLEC, a physical taking of the incumbent LEC's property has taken place.[54] This is neither good, bad nor indifferent. It is a simple legal reality. A quick visit to the collocation spaces currently located on incumbent LEC premises brings home dramatically the fact that the government has essentially seized this incumbent LEC property and dedicated it to the occupation and use of CLECs.
- Section 251(c)(6) of the Act expressly authorizes the Commission to require that an incumbent LEC make physical collocation available. Thus, to the extent that physical collocation is ordered consistent with the terms of Section 251(c)(6) of the Act, the Commission's actions do not constitute an unauthorized taking of

[53] *Collocation Order* at ¶¶ 67-69.

[54] *See, e.g.*, *Bell Atlantic Telephone Companies v. FCC*, 24 F.3d 1441, 1445 (D.C. Cir. 1994).

private property for public use. Instead, the Commission's collocation rules must be targeted to constitute an authorized taking of incumbent LEC property.

- Obviously, when a federal agency exercises delegated takings authority, it must be careful to limit its actions to those expressly authorized in its enabling statute. Here the Commission is constrained to order physical collocation only for "equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier. . ."[55] As is discussed below, this limitation on the Commission's takings power under the Act ought not to stand in the way of development of a rational and successful collocation policy. However, the Commission must be aware that it will not be granted the same Chevron deference in adopting overly inclusive collocation rules as it would be granted in the case of most other regulatory actions.[56]
- Finally, it must be remembered that a physical taking of private property must be accompanied by payment of just compensation. The *Collocation Order* seemed to characterize Qwest's position as arguing that the *Collocation Order* itself was unconstitutional because it did not provide for just compensation. Finding that Qwest had not documented that it would not be justly compensated for collocation provided to CLECs, the Commission concluded that "U S WEST has failed to show that our collocation rules effect an unconstitutional taking under the fifth amendment."[57] But this is not, in Qwest's opinion, the relevant

[55] 47 U.S.C. § 251(c)(6).

[56] *See Bell Atlantic v. FCC*, 24 F.3d at 1445-46.

[57] *Collocation Order* at ¶ 69.

inquiry. The law is quite clear that, should the Commission's rules require or permit a CLEC to obtain physical collocation from an incumbent LEC at a price which is not compensatory, the difference between a constitutionally adequate price and the price paid by the CLEC must be made up by the Federal Treasury.[58] This Commission has never undertaken an inquiry to determine the relationship between the amount its rules or the Act set for property dedicated to CLECs under the collocation rules and a constitutionally adequate compensation for taken property. Obviously the Commission is of the opinion, which seems to be generally shared, that no such inquiry need be undertaken. But the Commission is not required to examine the amount which would be required for just compensation for property taken for collocation only because the Federal Government is required as a matter of law to make good the difference between the amount which the Commission sets and the constitutionally adequate amount. If the Commission disagrees with this analysis, serious additional thought must be given to the issue of takings and just compensation in the context of collocation.[59] If the Commission agrees with the analysis, it still must be cognizant that every price below value which it gives to a CLEC in setting the price for collocation space is a one-for-one subsidy financed by taxpayers.

---

[58] *See, e.g., Blanchette v. Connecticut General Insurance Corps.*, 419 U.S. 102, 126-27, 148-49 (1974).

[59] In all events, the Commission should state on the record whether it believes that its rules provide for or permit just compensation for taken property, and

Respectfully submitted,

QWEST COMMUNICATIONS
INTERNATIONAL INC.

By: Blair A. Rosenthal

Robert B. McKenna
Blair A. Rosenthal
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2861

Its Attorneys

Of Counsel,
Dan L. Poole

October 12, 2000

whether it believes that incumbent LECs have a cause of action against the Commission for any just compensation shortfall.

ATTACHMENT

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
and	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

PETITION OF QWEST CORPORATION FOR
CLARIFICATION OR, IN THE ALTERNATIVE, RECONSIDERATION

Qwest Corporation ("Qwest") respectfully requests clarification of the Commission's order establishing a default interval of 90 days for incumbent LECs' provisioning of collocation space.[1] Qwest does not object to the Commission's imposition of a default national rule, provided mechanisms exist to take account of certain context-specific issues that may make provisioning collocation space within the default interval impossible. The *Order* generally appears to recognize the need for such mechanisms, as it makes the default rule applicable only where alternative intervals have not been established through the statutory negotiation and arbitration processes.

But the Commission's discussion of the interplay between its default rule and incumbent LECs' statements of generally available terms and conditions ("SGATs") is subject to varying

---

[1] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability* and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No, 96-98, FCC 00-297, CC Docket Nos. 98-147 and 96-98 (rel. Aug. 10, 2000) ("*Order* or *Collocation Provisioning Order*").

interpretations.[2] The Commission should clarify that, where an incumbent LEC files an amendment to its SGAT that proposes a provisioning interval longer than 90 days, and the relevant state commission permits the amended SGAT to take effect by refraining from taking action within the statutory deadline,[3] the incumbent's proposed interval — rather than the Commission's default rule — will apply unless and until the state commission rules otherwise. Qwest submits that this interpretation is the most reasonable reading of paragraph 36 of the *Order*.

If the Commission instead intended that the *Order* require compliance with the 90-day default rule *notwithstanding* a state commission's effective approval (by operation of law) of an amended SGAT, Qwest respectfully requests reconsideration of that decision. Requiring compliance with the federal default rule in lieu of the interval specified in the SGAT would be inconsistent with section 252 of the Act. Moreover, the Commission's apparent assumption that 90 days is nearly always a reasonable period for provisioning collocation space appears to be founded in large part on an incorrect understanding of Qwest's own provisioning policy. Far from agreeing invariably to provision cageless collocation space within 90 days,[4] Qwest has made clear to requesting carriers and state commissions that, absent adequate forecasts of the demand for collocation space, Qwest *cannot* provision space within 90 days in many circumstances. As the attached declaration of Georganne Weidenbach demonstrates, where demand forecasts are inadequate, or where a CLEC request necessitates substantial reconditioning or adjacent collocation, a 90-day maximum provisioning interval is unreasonable.

---

[2] *See id.* ¶ 36.

[3] *See* 47 U.S.C. § 252(f)(3)(B).

[4] *See Collocation Provisioning Order* ¶ 27 (stating that Qwest has "committed itself" to provisioning cageless collocation space within 90 days).

Qwest wishes to emphasize that it does not seek to establish that an incumbent LEC may delay the provisioning of collocation space for no good reason. Qwest is not only a seller of collocation space, but a major purchaser as well. Qwest agrees that it is appropriate for the Commission to adopt rules that encourage incumbents to satisfy collocation requests on a timely basis. Qwest is filing this petition because the Commission's rules could be read to create a situation where mandatory collocation intervals simply cannot be met. As a general principle, allowing 90 days for collocation provisioning is a reasonable and attainable goal, assuming proper forecasting of demand. But if forecasting is not provided, or is not accurate, incumbent LECs will not be able to plan their own floor-space needs and those of CLECs, making 90 days an unreasonable standard. In addition, when an incumbent must construct or condition space to satisfy a collocation request, the provisioning process often will take more than 90 days, regardless of whether forecasting has been provided. This petition seeks to establish a regulatory structure in which these circumstances can be properly addressed. It does not seek a retrenchment of the Commission's collocation commitment or rules.

BACKGROUND

In its *Local Competition Order*[5] and *Advanced Services First Report and Order*,[6] the Commission imposed a series of stringent collocation requirements on incumbent LECs. On reconsideration, in response to petitions asserting that additional requirements were necessary to promote vigorous competition, the Commission adopted the default 90-day provisioning rule,

---

[5] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996).

[6] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (1999).

among other measures, in the *Collocation Provisioning Order*.[7] The *Order* purports to continue the Act's primary reliance on carriers and state commissions to establish the particular terms of interconnection agreements. Accordingly, it imposes a 90-day maximum provisioning interval *only* where (a) a requesting party and incumbent LEC have failed to agree on an appropriate provisioning interval, or (b) a state has not set its own provisioning interval.[8]

Where a collocation provisioning interval will be implemented through a new or amended interconnection agreement, the effect of the Commission's default rule is relatively straightforward: It will apply failing the adoption of a different interval through the negotiation or arbitration processes described in section 252.[9] Where an SGAT or tariff is involved, however, implementation of this rule is less clear. Paragraph 36 of the *Order* addresses these circumstances:

> In some instances, a state tariff sets forth the rates, terms, and conditions under which an incumbent LEC provides physical collocation to requesting carriers. An incumbent LEC also may have filed with the state commission a statement of generally available terms and conditions (SGAT) under which it offers to provide physical collocation to requesting carriers. Because of the critical importance of timely collocation provisioning, we conclude that, within 30 days after the effective date of this Order, the incumbent LEC must file with the state commission any amendments necessary to bring a tariff or SGAT into compliance with the national standards. At the time it files these amendments, the incumbent must also file its request, if any, that the state set intervals longer than the national standards as well as all supporting information. For a SGAT, the national standards shall take effect within 60 days after the amendment's filing except to the extent the state commission specifies other application processing or provisioning intervals for a particular type of collocation arrangements, such as cageless collocation. Where a tariff must be amended to reflect the national standards, those standards shall take effect at the earliest time permissible under applicable state requirements.[10]

---

[7] *See Collocation Provisioning Order* ¶¶ 14-69.

[8] *See id.* ¶ 22.

[9] *See id.* ¶¶ 33-35.

[10] *Id.* ¶ 36.

The need for clarification arises from the fact that amendments to an SGAT become effective within 60 days of the incumbent LEC's submission *regardless* of whether the state commission has completed its review of the amendment. *See* 47 U.S.C. § 252(f)(3). Notwithstanding this statutory provision, the *Order* arguably could be read to require an *affirmative ruling* by a state commission before an SGAT that contains some provisioning interval other than the Commission's 90-day default interval becomes effective.[11]

ARGUMENT

I. THE COMMISSION SHOULD CLARIFY THAT AN INCUMBENT LEC MAY RELY ON THE PROVISIONING INTERVAL SPECIFIED IN AN AMENDED SGAT REGARDLESS OF WHETHER A STATE COMMISSION AFFIRMATIVELY APPROVES THE AMENDMENT OR INSTEAD ALLOWS IT TO TAKE EFFECT BY OPERATION OF LAW.

As the Commission has recognized, while a 90-day provisioning interval for collocation space may be appropriate in some situations, circumstances inevitably will exist in which a longer interval is necessary.[12] For example, "conditioning space in a premises [may be] particularly difficult,"[13] and forecasts of demand by CLECs may be inadequate for the incumbent to plan for the necessary construction.[14] As a general matter, the *Order* appropriately recognizes the need to rely on the negotiation and arbitration processes established in section 252 of the Act to tailor provisioning intervals to particular circumstances.[15]

---

[11] *See id.* ("national standards shall take effect within 60 days after the amendment's filing except to the extent the state commission *specifies* other application or provisioning intervals for a particular type of collocation arrangement, such as cageless collocation") (emphasis added). Similarly, where a tariff amendment that proposes an interval longer than 90 days takes effect without affirmative action by a state commission, it is unclear whether the Commission would require the incumbent LEC subject to the default 90-day rule.

[12] *See, e.g., id.* ¶ 22.

[13] *Id.*

[14] *See id.* ¶ 16 (citing comments of Bell Atlantic at 10-11).

[15] *See id.* ¶ 22; *see also id.* ¶ 37 ("States will continue to have flexibility to adopt different intervals and additional collocation requirements, consistent with the Act.").

With respect to tailoring intervals through the SGAT process, however, the *Order* is ambiguous. On the one hand, the Commission has acknowledged that incumbents' amendments to their SGATs may include "intervals *longer* than the national standards," provided the incumbent provides supporting information.[16] Read in light of section 252(f)(3) of the Act, this acknowledgment should mean that, where (a) an incumbent has a good-faith basis for establishing a provisioning interval of longer than 90 days, (b) the incumbent includes such an interval within its amended SGAT and provides supporting information, and (c) the relevant state commission approves the amended SGAT by failing to take any contrary action within 60 days of the submission, the incumbent may rely on the longer provisioning interval.[17] On the other hand, the *Order* includes some language that could be read to provide that a longer provisioning interval will be effective only if a state commission makes an *affirmative* ruling to that effect.[18]

The Commission should clarify that the former reading is the correct one. Applying the default 90-day interval after a state commission has declined to reject an amended SGAT would be inconsistent with section 252(f)(3), as well as with the Act's primary reliance on carriers and state commissions to establish specific interconnection provisions.[19] Such an interpretation also would be inconsistent with the general recognition in the *Order* that the national default will

---

[16] *See id.* ¶ 36 (emphasis added).

[17] *See* 47 U.S.C. § 252(f)(3)(B). By this filing, Qwest does not suggest that a state order extending the provisioning interval for reasons other than forecasting deficiencies or construction requirements would be reasonable.

[18] *Collocation Provisioning Order* ¶ 36 ("national standards shall take effect within 60 days after the amendment's filing except to the extent the state commission *specifies* other application or provisioning intervals for a particular type of collocation arrangement, such as cageless collocation") (emphasis added).

[19] *See generally* 47 U.S.C. § 252.

apply *only* "when the state does *not* set its own standards."[20] A state may "set" standards by declining to take action with respect to an SGAT, just as it can by issuing an affirmative ruling.

Moreover, as explained more fully in the following section, requiring compliance with the 90-day default interval when an incumbent LEC has documented its inability to comply with that deadline — simply because the state commission chose not to rule affirmatively on an amended SGAT, or lacked sufficient time to act — would unfairly penalize incumbents. Qwest has now filed SGATs in 11 of the 14 states in which it provides service as an incumbent LEC. All of these SGATs contain collocation provisions, and all have been the subject of extensive debate and revision at the Section 271 workshops in which Qwest has been participating over the last year. By the November 9 deadline, Qwest plans to have filed SGAT amendments in these 11 states and original SGATs in the remaining three states. These revised and new SGATs all will contain detailed language dealing with collocation issues, including documentation of the manner in which collocation requests that cannot be fulfilled within 90 days should be handled. While Qwest intends to prosecute these SGAT filings vigorously, and will work to secure affirmative state approvals of the amended collocation language under Section 252(f)(3)(A) within 60 days of filing, Qwest cannot assure that all such approvals will be obtained within that time frame. It would be unreasonable to make the availability of an exception to the 90-day provisioning interval — for which the need is fully documented — hinge on circumstances entirely beyond the incumbent LEC's control.

II. IN THE ALTERNATIVE, THE COMMISSION SHOULD RECONSIDER THE IMPOSITION OF THE 90-DAY DEFAULT RULE IN CIRCUMSTANCES WHERE A STATE COMMISSION HAS DECLINED TO RULE ON AN AMENDED SGAT WITHIN 60 DAYS.

---

[20] *Collocation Provisioning Order* ¶ 22 (emphasis added).

If the Commission denies Qwest's request for clarification and determines that the *Order* intended to impose the 90-day default provisioning interval in the absence of an affirmative ruling on an SGAT amendment, Qwest requests reconsideration of that aspect of the *Order*.

As discussed above, section 252(f)(3) makes an incumbent's SGAT effective after 60 days, regardless of whether the state commission has issued an affirmative ruling or instead simply let the SGAT take effect automatically.[21] Therefore, treating an amended SGAT as *ineffective* in the absence of an affirmative ruling would be inconsistent with the statute. In addition, section 252's establishment of negotiation and arbitration processes precludes the Commission from imposing any interconnection obligation as an absolute requirement.[22] But if the *Order* imposed the 90-day provisioning interval irrespective of an incumbent's submission of an SGAT documenting the need for an alternative interval, it would render the negotiation and arbitration processes moot. Reading the *Order* to allow an incumbent to adhere to a longer provisioning schedule after filing an adequately supported SGAT therefore is necessary under section 252.

Moreover, if the *Order* were read to assert that a 90-day provisioning interval *invariably* can be met, there is no support in the record for such an assertion. As the attached declaration of Georganne Weidenbach demonstrates, Qwest's ability to provision collocation space within 90 days depends on accurate demand forecasts and is dramatically affected when a CLEC request necessitates extensive conditioning of space or construction of an adjacent vault.

---

[21] *See* 47 U.S.C. 252(f)(3).

[22] *See id.* §§ 252(a), (b).

The statement in the *Order* that the default 90-day interval "exceeds the interval U S WEST [now Qwest] has committed itself to achieve for cageless physical collocation"[23] is based on an incorrect understanding of Qwest's internal policy. Qwest has entered into *some* agreements with CLECs that commit Qwest to provision space within 45 or 90 days, because those agreements also require CLECs to provide Qwest with long-term forecasts of demand. Such forecasting requirements are critical to Qwest's willingness to commit to short provisioning intervals. Absent such forecasts, Qwest cannot make advance preparations for provisioning collocation space and therefore cannot ensure compliance with a 90-day provisioning commitment. Thus, an absolute requirement to provision collocation space within 90 days — which the *Order* would impose if not read as Qwest suggests in section I above — cannot be based on the assertion that Qwest already has adopted such a requirement for itself.

Finally, if the Commission interprets the *Order* as imposing a requirement to comply with the 90-day default interval even where an incumbent has already filed an SGAT justifying a longer interval, the Commission should create exceptions for situations where CLECs have not sufficiently forecast demand, or where extensive space reconditioning or construction of adjacent vaults are required. As the attached declaration of Georganne Weidenbach demonstrates, Qwest cannot comply with a 90-day deadline in such circumstances. It would be patently unreasonable for the Commission to penalize an incumbent LEC for failing to comply with the 90-day provisioning interval when the LEC (a) has taken all steps within its power to have an amended SGAT approved by the state commission, and (b) cannot possibly meet a CLEC's requirements within 90 days because of extensive construction requirements or other factors that it could not reasonably anticipate.

---

[23] *Collocation Provisioning Order* ¶ 27.

CONCLUSION

For the foregoing reasons, the Commission should clarify the Order by stating that an incumbent LEC that has filed an adequately documented SGAT amendment that includes a provisioning interval longer than 90 days may comply with that interval if the state commission declines to issue any ruling within 60 days of the filing of the amendment. In the alternative, the Commission should reconsider the decision to apply the 90-day interval in this circumstance.

Respectfully submitted,

Robert B. McKenna
QWEST CORPORATION
1801 California Street, Ste. 5100
Denver, CO 80202
(303) 672-2861

William T. Lake
Matthew A. Brill
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Counsel for Qwest Corporation

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
and	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications **Act of 1996**	)	CC Docket No. 96-98

Declaration of Georganne Weidenbach

1. My name is Georganne Weidenbach. I am employed by Qwest Communications International as a Network Planner, Strategist and Negotiator in the Technical Regulatory Interconnection Planning group. From 1996 to 1998, I served as the Lead Project Manager for Collocation and Interconnection for U S WEST, Inc., before the merger of Qwest and U S WEST.

2. I have held numerous positions with Qwest and U S WEST, including managing the Design Services installation and repair dispatch center for the Local Network Organization. I have extensive Marketing, Public Policy and Engineering background, including the development of written methods and procedures for Design Services and Collocation applications.

3. I hold a Bachelor of Science degree in business from Regis University at Denver.

4. I have reviewed the FCC's recent Collocation Order, and believe that the Order is deficient in three important respects:

1) **Forecasting** — The Order fails to require CLECs to provide, or to permit ILECs to require CLECs to provide, timely and accurate forecasts of their collocation requirements. It instead leaves the issue of forecasting to each individual state. Forecasts are absolutely crucial in orderly administration of collocation provisioning.

2) **Adjacent Collocation** — The Order, in rule §51.323(l), establishes a 90-day interval for Adjacent Collocation. Such a requirement is not supported by record evidence or the text of the Order, nor is a 90-day interval a reasonable requirement, given the work required.

3) **Reconditioning of Space** — The Order requires incumbent LECs to complete the reconditioning of space as a part of the 90 day interval. This is an unreasonable requirement, given the amount of work required to recondition space, particularly since the FCC has not required CLECs to provide a forecast of their collocation requirements.

I will address each of the above issues in the following sections of this affidavit.

5. **Forecasting**. To achieve the 90-day intervals established in the Order for caged or cageless physical collocation, it is critical that incumbent LECs obtain accurate and timely forecasts from CLECs. Such forecasts are required to determine if sufficient space is available, and to pre-provision such infrastructure as power, air conditioning, lighting, and to recondition office space or remove unused, obsolete equipment if required. Such pre-provisioning is necessary, since such infrastructure cannot be completed within the 90-day interval between the receipt of an application by a CLEC and the turnover of space by Qwest.

6. For example, Qwest has approximately 1,400 central office locations, but more than two-thirds of these central offices have no collocation. Without forecasts, Qwest cannot reasonably be expected to predict when and if a request for collocation will arrive at one of the more than 900 central offices where no collocation has yet been requested. Nor can Qwest be expected to accurately predict the specific power, space,

and air conditioning needs for the collocation request of such a future CLEC application. As a result, it is unreasonable to require Qwest to pre-provision the space, power, air-conditioning, and other infrastructure in these locations for the possible arrival of a collocator at some point in time in the future.

7. Forecasts are also an important tool in the hiring, training, and deployment of work force engaged in the various stages of collocation – including feasibility studies, quotation development, and construction.

8. **Adjacent Collocation**. Adjacent collocation is required when space for physical collocation has been exhausted at a particular premise. In the context of an exhausted central office building, it is unreasonable to expect the construction of an adjacent structure (such as a building addition, controlled environmental vault, or other structure) within the 90-day interval. Because the Order grants CLECs the right to construct the adjacent structure, a typical process will involve first determining the amount of space required by the CLEC, a review of the plans for the site, including future construction plans, parking requirements, hoisting areas, existing cable vaults and cable runs. Once a general design has been established, a more detailed design must be prepared, and often bids will be required from multiple general contractors. Building permits may also be required from the local governmental agency. Actual construction of the adjacent structure, once permits have been obtained and a contractor is selected will also often require several months for excavation, drainage, construction of the structure, and the supporting infrastructure (power, lighting, etc.). Completion of all of this work, as well as the work required to permit the incumbent LEC to terminate the associated DC Power, and tie cables to the network, cannot generally be completed in a 90-day interval.

This is particularly unreasonable, as the FCC has granted to the CLEC the right to complete the majority of this work for adjacent collocation.

9. **Reconditioning of Space**. Reconditioning of space is required when a central office building has exhausted space, but the same central office has available administrative space that may be converted to central office space. Such conversion of administrative space to central office space is referred to as reconditioning space. A typical administrative space contains carpeted floors, desks, suspended ceilings, and associated lighting fixtures. Conversion of this space typically involves the hiring of an architect, who prepares drawings and detailed specifications, for the removal of the carpeting, ceiling, lighting fixtures, etc. as well as the construction of the new floor, the installation of new lighting fixtures, the installation of new electrical outlets, and the construction of new air conditioning venting (and cooling capacity, if required).

10. Once the specifications are completed, the drawings and specifications are submitted to general contractors through a request for bids, depending on the size of the job. Once the contractor is selected, the construction can begin.

11. All of the above generally require substantially more than 90 days for completion.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed this ___ day of October, 2000.

_____

Georganne Weidenbach

Federal Communications Commission

The FCC Acknowledges Receipt of Comments From ...

Qwest Corporation

...and Thank You for Your Comments

Your Confirmation Number is: '20001010036777 ' 1

Date Received: Oct 10 2000

Docket: 98-147

Number of Files Transmitted: 1

File Name	File Type	File Size (bytes)
PETITION FOR RECONSIDERATION	Microsoft Word	53761

Initiate a Submission | Search ECFS | Return to ECFS Home Page

FCC Home Page | Search | Commissioners | Bureaus/Offices | Finding Info

updated 07/07/00

CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused 1) the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be filed electronically with the FCC by using its Electronic Comment Filing System, 2) a paper and diskette copy of the **COMMENTS** to be served, via hand delivery, upon the entity listed on the attached service list (marked with a number sign), and 3) a courtesy paper copy of the **COMMENTS** to be served, via hand delivery, upon all other persons listed on the attached service list.

Ross Dino
Ross Dino

October 12, 2000

William E. Kennard
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

Gloria Tristani
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

Michael K. Powell
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

Harold Furchtgott-Roth
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

Susan P. Ness
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

Dorothy T. Attwood, Chief
Common Carrier Bureau
Federal Communications Commission
5th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

Michelle Carey, Chief
Policy and Program Planning Division
Federal Communications Commission
Portals II
445 12th Street, S.W.
Washington, DC 20554

Kathy Farroba, Deputy Chief
Policy and Program Planning Division
Federal Communications Commission
Portals II
445 12th Street, S.W.
Washington, DC 20554

Janice Myles
Policy and Program Planning Division
Federal Communications Commission
Portals II
445 12th Street, S.W.
Washington, DC 20554

Glenn Reynolds, Deputy Chief
Common Carrier Bureau
Federal Communications Commission
5th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

#International Transcription
Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

(including 3x5 inch diskette w/cover letter)

CC96-98tt-el.doc
Last Update: 10/12/2000